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Attorneys for Plaintiff Classes
[Additional counsel below]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

TRISHA WREN and CYNTHIA PIPER,
et al., individually and on behalf of others
similarly situated,

Plaintiffs,

vs.

RGIS Inventory Specialists, LLC, RGIS,
LLC, and Does 1-25 Inclusive,

Defendants.

Case No. 3:06-cv-05778 JCS

Case No. 3:07-cv-00032 JCS

CLASS AND COLLECTIVE ACTION

**DECLARATION OF ANDREW P. LEE IN
SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL**

Date: July 29, 2010

Time: 9:30 a.m.

Judge: Hon. Joseph C. Spero

1 Additional counsel:

2 Peter Schneider, *pro hac vice*
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1 I, Andrew P. Lee, declare:

2 1. I am an associate at the law firm of Schneider Wallace Cottrell Brayton Konecky
3 LLP. I am a member in good standing of the bar of the State of California. I make these
4 statements based on personal knowledge and would so testify if called as a witness at trial.

5 2. This Declaration is submitted in support of Plaintiffs' Motion for Preliminary
6 Approval of Settlement.

7 3. On July 9, 2010, Plaintiffs filed their Motion for Preliminary Approval of Settlement
8 [Dkt. No. 840], a proposed Order Granting Preliminary Approval (attaching the Stipulation of
9 Settlement) [Dkt. No. 840-1], and the Declaration of Guy B. Wallace in support thereof [Dkt. No.
10 840-2].

11 4. At the time of that filing, five named Plaintiffs and one member of Plaintiffs'
12 Counsel had not executed the Stipulation of Settlement. Attached as **Exhibit A** is a fully executed
13 copy of the Stipulation of Settlement with all required signatures.

14
15 I declare under penalty of perjury under the laws of the State of California and the United
16 States of America that the foregoing is true and correct. Executed on July 28, 2010 in San
17 Francisco, California.

18
19 /s/Andrew P. Lee
20 ANDREW P. LEE
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EXHIBIT A

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 Cynthia Piper, *et al.*

[Additional counsel appear after signature pages]

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Attorneys for RGIS, LLC (erroneously sued as
 RGIS Inventory Specialists, Inc.)

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

TRISHA WREN and CYNTHIA PIPER, *et al.*, individually and on behalf of others
 similarly situated,

Plaintiffs,

v.

RGIS INVENTORY SPECIALISTS, LLC
 and DOES 1-25, inclusive,

Defendants.

Case No. 3:06-cv-05778 JCS
 Case No. 3:07-cv-00032 JCS

STIPULATION OF SETTLEMENT

1 Plaintiffs Trisha Wren, Kevin Barnes, Brent Whitman, Kathlene Feige, Lisa
 2 Cunningham-Gibson, Cynthia Piper, Tephine Saïtes, Margaret Cruz Boze, Michelle
 3 Pease, Kimberly Cassara, Rabecka Sheldranti, Victoria Thompson, Melanie Manos,
 4 Norma Garcia, Cheryl Pierson, Sally Rosenthal, Nicole Verbick, Tammy Schnars, and
 5 Margaret Martinez, individually and on behalf of all members of the classes defined
 6 herein, and their counsel of record (collectively "Plaintiffs"), defendant RGIS, LLC,
 7 erroneously sued as RGIS Inventory Specialists, Inc., and their counsel of record
 8 (collectively "Defendant"), and subject to the terms and conditions hereof and final
 9 approval by the Court, hereby enter into this stipulation of settlement ("Agreement")
 10 pursuant to Federal Rule of Civil Procedure 23(e). This settlement is intended to fully,
 11 finally, and forever compromise, release, resolve, discharge, and settle the released
 12 claims subject to the terms and conditions set forth in this settlement. The instant action
 13 shall be dismissed with prejudice upon final approval of this settlement by the Court.

14 1. THE INSTANT ACTION

15 1.1 Nature Of The Action And Claims Raised

16 Defendant, RGIS, LLC, provides inventory services to retailers across the
 17 country. To provide those services, Defendant's employees travel to its customers'
 18 establishments to count the items to be inventoried. Generally, prior to counting,
 19 employees are required to don certain equipment, including a small audit machine.

20 The instant action, *Wren, et al., v. RGIS Inventory Specialists, LLC*, Nos. 3:06-cv-
 21 05778, 3:07-cv-00032, arises from the consolidation of two separate actions alleging
 22 similar claims. In the operative, June 26, 2007, First Amended Consolidated Complaint
 23 (dkt. no. 88), Plaintiffs assert claims under the Fair Labor Standards Act ("FLSA"), 29
 24 U.S.C. §§ 201 *et seq.*, and the laws of California, Illinois, Oregon, and Washington.
 25 Those claims include, but are not limited to, allegations that Defendant improperly
 26 denied Plaintiffs: (i) minimum, straight time, and overtime wages by failing to pay
 27 Plaintiffs for all hours worked, including donning and related waiting time; (ii) required

1 compensation for time spent traveling to and from certain inventories on company-
 2 provided transportation; (iii) adequate meal periods and rest breaks; and (iv) accurate
 3 itemized wage statements. Plaintiffs further allege that, due to Defendant's alleged
 4 failure to pay all wages earned and to provide adequate meal periods and rest breaks,
 5 Defendant has improperly failed to pay California and Oregon employees who were
 6 terminated all wages upon termination. Plaintiffs also allege that Defendant's conduct
 7 constitutes unfair business practices, entitling them to restitution and injunctive relief
 8 under California's Unfair Competition Law. Named Plaintiffs sought to recover
 9 damages, equitable relief, penalties, liquidated damages, interest, attorney's fees, and
 10 costs on behalf of themselves and the putative classes.

11 1.2 Procedural History Of The Instant Action

12 A. On September 20, 2006, plaintiffs Trisha Wren, Kevin Barnes, and
 13 Brent Whitman, filed a putative class action in the U.S. District Court for the Northern
 14 District of California, *Wren, et al., v. RGIS Inventory Specialists*, No. 3:06-cv-05778,
 15 alleging causes of actions under California, Oregon, and Washington state law.

16 B. On January 4, 2007, plaintiffs Cynthia Piper, Tephine Saïtes,
 17 Margaret Cruz Boze, Michelle Pease, Kimberly Cassara, Rabecka Sheldranti, Victoria
 18 Thompson, Melanie Manos, Norma Garcia, Cheryl Pierson, Sally Rosenthal, Nichole
 19 Verbick, and Tammy Schnars, filed a putative collective/class action in the U.S. District
 20 Court for the Northern District of California, *Piper, et al., v. RGIS Inventory Specialists*,
 21 No. 3:07-cv-00032, alleging causes of action under the FLSA and California state law.

22 C. On June 6, 2007, the Court consolidated *Piper* and *Wren* (dkt. no.
 23 86). Accordingly, Plaintiffs filed a consolidated complaint on June 26, 2007 (dkt. no.
 24 88). The consolidated complaint added causes of action arising under Illinois law.

25 D. On July 21, 2007, Plaintiffs moved for issuance of notice to putative
 26 FLSA class members under 29 U.S.C. § 216(b) (*Piper* dkt. no. 125). On December 19,

2007, the Court conditionally certified two opt-in classes in connection with Plaintiffs' FLSA claims for collective treatment:

- (i) "All non-exempt hourly employees of RGIS Inventory Specialists, now operating as RGIS, LLC, who were, are, or will be employed as [A]uditors during the period of three years prior to the commencement of this action through the date of judgment in this action;" and
- (ii) "All non-exempt hourly employees of RGIS Inventory Specialists, now operating as RGIS, LLC, who were, are, or will be employed as assistant [] team leaders, team leaders, and assistant or associate area managers of RGIS during the period of three years prior to the commencement of this action through the date of judgment in this action."

(dkt. no. 216). Notice was issued to approximately 290,000 current and former employees of Defendant and 26,855 individuals submitted consents to participate in the instant action as opt-in plaintiffs. The Court subsequently dismissed 339 of those opt-in plaintiffs for a variety of reasons (dkt. no. 746).

E. On July 10, 2008, Plaintiffs moved for class certification of their state law claims under Fed. R. Civ. P. 23 (dkt. no. 403). While that motion was pending, on October 9, 2008, Defendant moved to decertify the FLSA collective action (dkt. no. 569). By order issued on February 6, 2009, the Court granted Plaintiffs' motion for certification pursuant to Fed. R. Civ. P. 23 and denied Defendant's motion to decertify the FLSA collective action (dkt. no. 694). The court certified the following Rule 23 classes:

- (i) All hourly Auditors, Assistant Team Leaders, Team Leaders and Associate Area Managers¹ employed by RGIS in California on or after January 1, 2005 with respect to the claims asserted in the Consolidated Complaint arising out of (1) donning and related waiting time from the time that equipment is made available for donning, (2) unpaid travel time on company provided travel for the first hour of travel to and the first hour of

¹ The Court's order references "*Assistant Area Managers*," as opposed to "*Associate Area Managers*." However, RGIS has not had a position in the United States during the applicable limitations periods with that title. Thus, the parties presume that the Court meant the "*Associate Area Manager*" position.

1 travel from an inventory site, and (3) the alleged failure to comply with the
2 requirements of California Labor Code section 226 that employers must
3 provide properly itemized wage statements;

4 (ii.) All hourly Auditors, Assistant Team Leaders, Team Leaders and Associate
5 Area Managers employed by RGIS in Oregon on or after September 20,
6 2000 with respect to the claims asserted in the Consolidated Complaint
7 arising out of donning and related waiting time from the time that
8 equipment is made available for donning;

9 (iii.) All hourly Auditors, Assistant Team Leaders, Team Leaders and Associate
10 Area Managers employed by RGIS in Washington on or after September
11 20, 2003 with respect to the claims asserted in the Consolidated Complaint
12 arising out of donning and related waiting time from the time that
13 equipment is made available for donning; and

14 (iv.) All hourly Auditors, Assistant Team Leaders, Team Leaders and Associate
15 Area Managers employed by RGIS in Illinois on or after January 4, 2004²
16 with respect to the claims asserted in the Consolidated Complaint arising
17 out of donning and related waiting time from the time that equipment is
18 made available for donning.

19 In certifying Plaintiffs' state law claims and denying Defendant's motion to decertify
20 Plaintiffs' FLSA claims, the Court stated that certification was based on allegations of a
21 "uniform policy adopted by RGIS of requiring [A]uditors to be ready to start counting,
22 with equipment already donned, at the inventory start time." Pursuant to this decision,
23 notice of class-action litigation was issued to approximately 47,000 current and former
24 employees of Defendant in California, Illinois, Oregon, and Washington. Thirty-one of
25 the individuals receiving notice timely opted out of the class action.

26 F. On November 21, 2008, Defendant moved for summary judgment on
27 Plaintiffs' unpaid travel time, unpaid donning and waiting time, meal period, and rest
28 break claims (dkt. no. 648). On August 24, 2009, the Court granted that motion in part,

² The Court's order incorrectly identifies this date as January 4, 2000.

1 and denied it in part (dkt. no. 775). The Court granted Defendant summary judgment
2 with respect to Plaintiffs' travel time claims, holding that such time was "'normal travel
3 from home to work' and thus, it is not considered work time' under the FLSA and the
4 Portal-to-Portal Act," and that it was not compensable work time under California,
5 Illinois, or Washington law. With respect to Plaintiffs' meal period claims, the Court
6 explained that it had not certified those claims for class treatment, and then granted
7 Defendant's motion with respect to the Named Plaintiffs under Oregon and Illinois law,
8 and denied it without prejudice under California and Washington law. With respect to
9 Plaintiffs' donning and waiting time claims, the Court denied Defendant's motion for
10 summary judgment.

11 G. On October 5, 2009, the parties participated in a mediation before
12 David A. Rotman. That mediation ended without the parties reaching any resolution to
13 the instant action.

14 H. On April 22 and May 7, 2010, the parties participated in a second
15 mediation, this time before retired United States Magistrate Judge Edward A. Infante.
16 As part of the May 7, 2010 mediation session, Magistrate Infante made a "mediator's
17 recommendation" of settlement terms. Based on that recommendation, the parties
18 reached a settlement, the terms of which are memorialized herein.

19 1.3 Parties' Statements And Recognition Of The Benefits Of Settlement

20 A. Plaintiffs believe that the claims asserted in the instant action have
21 merit under the FLSA and California, Illinois, Oregon, and Washington law. However,
22 Plaintiffs recognize the cost and delay of continued proceedings necessary to prosecute
23 the instant action against Defendant through trial and appeal. Plaintiffs have also taken
24 into account the uncertain outcome and the risk of loss in any litigation, especially in a
25 complex action such as this. Plaintiffs are also mindful of the inherent problems of
26 proof under, and possible defenses to, the causes of action asserted and the causes of
27 action that could be asserted in the instant action. Plaintiffs believe that the settlement

1 set forth in this Agreement confers substantial benefits on class members. Based on
2 their evaluation, Plaintiffs have determined that the settlement is in the best interest of
3 the Plaintiffs and the Settlement Classes.

4 B. Defendant denies each and all of the claims alleged by Plaintiffs in
5 the instant action. Defendant expressly denies any and all charges of wrongdoing or
6 liability arising out of any of the acts, omissions, facts, matters, transactions, or
7 occurrences alleged, or that could have been alleged, in the instant action. Defendant
8 contends that, in compliance with applicable state and federal laws, its Auditors,
9 Assistant Team Leaders, Team Leaders, and Associate Area Managers have been paid all
10 wages due, have been afforded appropriate meal periods and rest breaks, have been
11 timely paid all wages owed upon termination, and have been provided with proper wage
12 statements. Because Defendant has complied with its obligations under the FLSA and
13 state law, Defendant contends that Plaintiffs' claims for minimum wages, straight time
14 wages, overtime wages, inadequate wage statements, waiting time penalties, injunctive
15 relief and civil penalties will fail. Defendant also denies that the asserted claims are
16 appropriate for collective treatment under 29 U.S.C. § 216(b) or class treatment under
17 Fed. R. Civ. P. 23, except pursuant to a settlement, due to the intractable management
18 problems and issues of individualized proof that would have been associated with a
19 class-wide trial. Nevertheless, Defendant has taken into account the uncertainty and
20 risks inherent in any litigation and has also concluded that further conduct of the instant
21 action would be protracted and expensive. Defendant, therefore, has determined that it
22 is desirable and beneficial that the instant action be settled in the manner and upon the
23 terms and conditions set forth in the Agreement.

24 2. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

25 IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiffs (for
26 themselves and the Settlement Classes) and Defendant, by and through their respective
27 attorneys, that, subject to the approval of the Court, the instant action will be finally and
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1 fully compromised, released, resolved, discharged, and settled, and will be dismissed
2 with prejudice as to Defendant, subject to the terms and conditions of this Agreement, as
3 follows:

4 2.1 Definitions

5 As used in this Agreement, the following terms have the meanings specified
6 below:

7 A. “Assistant Team Leader” means a current or former employee of
8 Defendant who held or holds the job title of “assistant team leader” in Defendant’s
9 personnel databases.

10 B. “Associate Area Manager” means a current or former employee of
11 Defendant who held or holds the job title of “associate area manager” in Defendant’s
12 personnel databases.

13 C. “Auditor” means a current or former employee of Defendant who
14 held or holds the job title of “auditor,” “top gun,” “expert” or “specialist” in Defendant’s
15 personnel databases.

16 D. “Authorized Claim” means the claim of an Authorized Claimant in
17 the amount to which the Authorized Claimant is entitled.

18 E. “Authorized Claimant” means any Settlement Class Member who is
19 entitled to a Settlement Payment.

20 F. “Claims Administrator” means the firm of Rust Consulting, Inc., or
21 any successors designated by the parties to effectuate the settlement.

22 G. “Class Counsel” means the Plaintiffs’ Attorneys.

23 H. “Defendant” means RGIS, LLC, erroneously sued in the instant
24 action as RGIS Inventory Specialists, Inc., including its past , present, or future officers,
25 directors, shareholders, employees, agents, principals, heirs, assigns, representatives,
26 accountants, auditors, consultants, attorneys, fiduciaries, both individually and in their
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1 official capacities, employee benefits plans, insurers and reinsurers, and their respective
2 successors and predecessors in interests, subsidiaries, affiliates, and parents.

3 I. "Effective Date" means the date by which *both* of the following have
4 occurred: (i) this settlement has received final approval from the U.S. District Court for
5 the Northern District of California or any other court taking jurisdiction of this matter;
6 and (ii) the appeal period from the Court's final order approving the class settlement
7 expires without an appeal being filed or, if such an appeal is filed, the date on which the
8 appeal is finally resolved, including any decision by the United States Supreme Court.
9 To the extent any appeal results in the settlement being found to be invalid, this
10 Agreement will be null and void for all purposes in its entirety.

11 J. "Final Settlement Hearing" means the hearing to be conducted by the
12 U.S. District Court for the Northern District of California, or any other court taking
13 jurisdiction of this matter, to determine whether to finally approve the settlement.

14 K. "Motion for Preliminary Approval" refers to the motion for
15 preliminary approval of this settlement and its supporting papers.

16 L. "Named Plaintiffs" mean Trisha Wren, Kevin Barnes, Brent
17 Whitman, Kathlene Feige, Lisa Cunningham-Gibson, Cynthia Piper, Tephine Saite,
18 Margaret Cruz Boze, Michelle Pease, Kimberly Cassara, Rabecka Sheldranti, Victoria
19 Thompson, Melanie Manos, Norma Garcia, Cheryl Pierson, Sally Rosenthal, Nicole
20 Verbick, Tammy Schnars, and Margaret Martinez.

21 M. "Notice of Settlement" refers to the official notice of settlement of
22 class action, substantially in the form attached hereto as exhibit 1.

23 N. "Order Granting Preliminary Approval" refers to the order or
24 statement of decision granting preliminary approval to this settlement.

25 O. "Plaintiffs' Attorney's Fees" refers to the fee amount to be paid to
26 Plaintiffs' Attorneys under the terms of this Agreement.

1 P. "Plaintiffs' Attorneys" means the attorneys representing Plaintiffs in
2 the instant action: (i) Schneider Wallace Cottrell Brayton Konecky LLP, 180
3 Montgomery Street, Suite 200, San Francisco, California 94104; (ii) Goldstein,
4 Demchak, Baller, Borgen & Dardarian, 300 Lakeside Drive, Suite 1000, Oakland,
5 California 94612; (iii) Grady Schneider, 801 Congress, Suite 400, Houston, Texas
6 77002; and (iv) Bailey Pinney PC, 1498 SE Tech Center Place, Suite 290, Vancouver,
7 Washington 98683.

8 Q. "Plaintiffs' Litigation Expenses" means the sum of Plaintiffs'
9 expenses of litigation, defined below, incurred by Plaintiffs in connection with the
10 instant action.

11 R. "Service Award" means a sum to be paid to the Named Plaintiffs and
12 to Carol Molmen, Joan Johnson, Latonia Williams, Jewell Gatlin, and Michele Zustak,
13 who served as proposed class representatives, but were never formally added as named
14 plaintiffs to the consolidated complaint, in recognition of their service in the instant
15 action.

16 S. "Settlement Amount" refers to \$27,000,000, which is the total and
17 maximum amount Defendant will be required to pay under this settlement, except that
18 in addition to the Settlement Amount, Defendant will pay its share of employer payroll
19 taxes associated with payments of back pay to Authorized Claimants pursuant to this
20 Agreement. The Settlement Amount will include the following elements: (i) cash
21 Settlement Payments as described in this Agreement to Authorized Claimants;
22 (ii) Service Awards to Named Plaintiffs as described herein; (iii) Plaintiffs' Litigation
23 Expenses as described herein; (iv) Plaintiffs' Attorney's Fees payable as described
24 herein; and (v) Settlement Expenses, as defined herein. No reversion of any portion of
25 the Settlement Amount will be made to Defendant.

26 T. "Settlement Class Members" means those persons who are members
27 of the classes who have not properly and timely opted out of the instant action, either as
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1 part of the notice process that followed the Court's certification of Plaintiffs' state law
2 claims (dkt. no. 694) or in connection with the opt-out procedures described herein
3 associated with the Notice of Settlement.

4 U. "Settlement Classes" are defined as follows:

- 5 (i.) Persons who submitted consents to participate in the instant
6 action as opt-in plaintiffs for purposes of Plaintiffs' FLSA
7 collective action claims and were not dismissed from this
8 action as part of the Court's amended order granting
9 Defendant's renewed motion to dismiss (dkt. no. 746); or
10 (ii.) Persons employed by Defendant as Auditors, Assistant Team
11 Leaders, Team Leaders or Associate Area Managers, as
12 defined herein, in California between January 1, 2005 and the
13 date of the entry of the Court's Order Granting Preliminary
14 Approval to this settlement, and who did not previously opt-
15 out of the instant action; or
16 (iii.) Persons employed by Defendant as Auditors, Assistant Team
17 Leaders, Team Leaders or Associate Area Managers, as
18 defined herein, in Illinois between January 4, 2004, and the
19 date of the entry of the Court's Order Granting Preliminary
20 Approval to this settlement, and who did not previously opt-
21 out of the instant action; or
22 (iv.) Persons employed by Defendant as Auditors, Assistant Team
23 Leaders, Team Leaders or Associate Area Managers, as
24 defined herein, in Oregon between September 20, 2000 and
25 the date of the entry of the Court's Order Granting Preliminary
26 Approval to this settlement, and who did not previously opt-
27 out of the instant action; or

1 (v.) Persons employed by Defendant as Auditors, Assistant Team
2 Leaders, Team Leaders or Associate Area Managers, as
3 defined herein, in Washington between September 20, 2003
4 and the date of the entry of the Court's Order Granting
5 Preliminary Approval to this settlement, and who did not
6 previously opt-out of the instant action.

7 V. "Settlement Expenses" means all expenses associated with
8 administering the settlement, including, but not limited to, the costs of the Claims
9 Administrator, the costs of giving Notice of Settlement, and the costs of disbursing the
10 settlement proceeds.

11 W. "Settlement Payments" means the amounts to be paid to individual
12 Authorized Claimants.

13 X. "Team Leader" means a current or former employee of Defendant
14 who held or holds the job title of "team leader" in Defendant's personnel databases.

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21 [THIS SPACE INTENTIONALLY LEFT BLANK]
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1 The parties enter into this Agreement and agree as follows:

2 2.2 Scope Of Settlement

3 The settlement described herein will resolve fully and finally all released claims
4 as described herein.

5 2.3 Approval Of Settlement

6 A. The parties will apply for approval of the settlement as described
7 herein.

8 B. As part of the settlement, Plaintiffs will request Service Awards for
9 the Named Plaintiffs. Defendant agrees not to oppose such a request.

10 C. Plaintiffs' Attorneys will petition the Court for an award of
11 reasonable attorney's fees and litigation expenses. Defendant agrees not to oppose such
12 a petition.

13 D. Plaintiffs' Attorney's Fees, Litigation Expenses, and any Service
14 Awards approved by the Court will be paid solely from the Settlement Amount.
15 Plaintiffs' Attorney's Fees will not exceed the amount of their calculated lodestar. In no
16 event will Defendant be required to pay more than the Settlement Amount, except that
17 Defendant will also pay its share of employer payroll taxes associated with payments of
18 back pay to Authorized Claimants pursuant to this Agreement.

19 E. Should the U.S. District Court for the Northern District of California,
20 or any other court taking jurisdiction of this matter, decline to approve all material
21 aspects of this Agreement or make rulings substantially altering the material terms of
22 this Agreement, except for the awards of Plaintiffs' Attorney's Fees, Litigation
23 Expenses, and Service Awards (each of which will be decided by the Court), Defendant
24 will have no obligation to make any payment pursuant to this Agreement, including
25 payment of any portion of the Settlement Amount.